

Minutes
Soil Conservation Interim Committee Meeting
Monday, July 27, 2009
9:00 a.m. to 3:10 p.m.
Room 204, Capitol Annex
Boise, Idaho

The meeting was called to order at 9:05 a.m. by **Cochairman Representative Ken Roberts**. Other Committee members present were **Cochairman Senator Joe Stegner**, Senator Lee Heinrich, Senator Bert Brackett, Representative Kate Kelly, Representative Darrell Bolz, Representative Judy Boyle and Representative Liz Chavez. Staff members present were Brooke Murdoch, Keith Bybee, Katharine Gerrity and Toni Hobbs.

Others present included Representative Bert Stevenson, District 26; Carol Youtz, Morgan Evans, Dwight Horsch, Cathy Horsch, Bill Story, Tony Bennett, Dave Saxey, Sara Schmidt and Biff Burleigh, Idaho Soil Conservation Commission; Steve Miller, Randy Purser, Eric Bastian, Kyle Hawley, Wayne Newbill and J. Kent Foster, Idaho Association of Soil Conservation Districts; Karma Bragg, Idaho District Employees Association; Lynn Rasmussen and Steven Becker, Nez Perce Soil and Water Conservation District; Terry Halbert, North Side Soil and Water Conservation District; Kelly Nielsen and Pamm Juker, Idaho State Department of Agriculture; Dar Olberding, Idaho Grain Producers; Dennis Tanikuni, Idaho Farm Bureau; Lynn Tominaga, Idaho Ground Water Association; Charlene Wimpy and Claude O. Bruce, Payette Soil and Water Conservation District; Bonnie Butler, Governor's Office; Jeff Allen, Northwest Power Planning Council; Ken Stinson and Cody Anderson, Latah Soil and Water Conservation District; Benjamin Davenport, Risch Pisca, PLLC; Leon Slichter, Idaho County Soil and Water; Jayson Ronk, Idaho Association of Commerce and Industry; and Jeff Burwell, Natural Resources Conservation Service.

Cochairman Roberts explained that the charge of this Committee is to look at the Idaho Code to see if it reflects what is necessary for the agricultural community in Idaho to support conservation-type projects. This includes the infrastructure, how to disburse the money and the accountability of the money, while at the same time allowing freedom for the conservation districts to act as they know best for their respective areas.

Cochairman Stegner suggested the possibility of holding future meetings in other areas of the state. He encouraged the participation from attendees and from the members. He explained that he has no preconceived agenda for what is to be achieved by this Committee. It is his hope that this will be a productive process that will end with clarification of the statute. He noted that ambiguity in the statutes is the reason the Committee was formed. In his opinion, roles and responsibilities need to be better defined.

The first speaker, **Brooke Murdoch, Analyst, Legislative Services Research and Legislation Office**, was introduced by **Cochairman Roberts** to review soil conservation

laws in Idaho and to highlight the powers and duties of the Soil Conservation Commission and the Soil Conservation Districts.

Ms. Murdoch began with a history of Idaho's Soil Conservation District Law and a review of the legislative intent language of that chapter, highlighting the provisions relating to the districts and the Commission. She then explained the statutory characteristics of the Soil Conservation Commission and of the districts, as well as the respective powers, functions and duties of each. A copy of Ms. Murdoch's complete PowerPoint presentation is available in the Legislative Services Office. Idaho Soil Conservation District Law is covered in Chapter 27, Title 22, Idaho Code.

Senator Kelly asked whether the Soil Conservation Commission has rulemaking authority. **Ms. Murdoch** said yes.

Senator Kelly asked how many Soil Conservation Districts there are throughout Idaho. **Ms. Murdoch** stated that there are 51 districts throughout the state.

Keith Bybee, Analyst, Legislative Services Budget and Policy Office, was introduced to discuss the Idaho Soil Conservation Commission budget and appropriation process. Mr. Bybee's complete PowerPoint presentation is also available in the Legislative Services Office.

Mr. Bybee stated that the fiscal year 2010 budget for the Idaho Soil Conservation Commission included a total budget of \$4,593,500 with FTP capped at 24; \$3,946,300 from General Funds; \$131,600 from dedicated funds; and \$515,600 from federal funds. He noted that the budget is a 10.6% reduction for all funds and a 12% general fund reduction from the FY2009 original appropriation. The ISCC receives funding from four different fund sources: the General Fund, the Resource Conservation and Development Fund, the Clean Water Revolving Loan Fund and the Federal Grant Fund.

Mr. Bybee explained that conservation has historically had 14 programs. Those include District Support, Total Maximum Daily Load (TMDL), Groundwater, Resource Conservation and Rangeland Development (RCRDP), Water Quality Program for Agriculture (WQPA), Conservation Reserve Enhancement Program (CREP), Idaho OnePlan, Conservation Improvement Grant (CIG), Carbon Sequestration, Upper Salmon Basin Watershed (USBWP), Clearwater Focus (CFP), Clean Water Revolving Loan Fund, Watershed Advisory Groups (WAGs) and Urban.

Mr. Bybee continued saying that dedicated funds include the Resource Conservation and Rangeland Development Fund and the Clean Water Revolving Loan Fund. There is current spending authority of \$101,600 for RCRDP, which is generated from interest accrued from revolving loan fund. This spending authority is provided for attorney costs, and overhead for implementation. The assets have grown from \$8,161,600 in 2000 to current balance of \$9,225,018. **Mr. Bybee** said that the Clean Water Revolving Loan Fund has \$30,000 spending authority to pay back interest to DEQ. He explained that the Commission entered into an agreement with DEQ to use a portion of the Clean Water

State Revolving Fund to address agricultural impacts on water. He then went on to say that the Federal Grant Fund has a fiscal year 2010 appropriation of \$515,600. Money in this fund is used for projects specified by the federal government supporting Clearwater Focus Watershed, Upper Salmon Basin Watershed Project and CREP.

Mr. Bybee went on to discuss general fund spending. Fiscal year 2009 spending was \$4.163 million. \$1,714,000 was spent for district support; \$2,227,000 was spent for TMDL water quality programs; \$164,400 for the RCRDP; and \$57,000 for the Idaho OnePlan. **Mr. Bybee** said that historically, the spending for the Idaho OnePlan has been about \$30,000. District support includes support staff for the Idaho Association of Soil Conservation Districts, district allocations, CIG, CREP, carbon sequestration, commission members and WAGs. There are 22 FTP and 8 contract staff.

Cochairman Roberts asked what the total spending, including federal money, for the year would be for the Idaho OnePlan. **Wayne Newbill, Idaho Association of Soil Conservation Districts**, said that most of the money in six of the last eight years has come from a congressional earmark. He said the amount is usually less than \$200,000 and is currently \$127,000 from 2008.

Mr. Bybee moved on to discuss the relationship between the Idaho Association of Soil Conservation Districts and the Soil Conservation Commission. He said that in fiscal year 1997-98, as a result of a court finding, the relationship between the Association and the Commission grew. This relationship included hiring contract staff to write plans relating to the court finding. At this time, the Association was already receiving state funding for an executive director position.

Mr. Bybee explained the general fund support for the Association. In fiscal year 2009, the Association employed three water quality analysts, a OnePlan coordinator, eight water quality resource conservationists and an executive director/administrative assistant. He also highlighted the following:

- Planned budget \$593,100 from Commission, received \$485,400 due to budget cuts
- Commission budget reductions for fiscal year 2010 removed \$347,800 from operating expenditures and \$100,000 from trustee and benefit payments, all of which was said to come from “contract staff”
- Association currently has \$155,100 budgeted for fiscal year 2010, which includes \$30,000 for the Idaho OnePlan, \$65,500 with an MOA and \$59,600 that is used to pay the executive director at IASCD

Mr. Bybee then explained the general fund support for district allocations. Currently, there is \$693,900 from trustee and benefit payments for district allocations. The formula for allocations is as follows:

- \$5,000 to every district
- The remainder is allocated as a percentage multiplied by the letter of intent and then actual allocation and is represented by this formula $A = (y/2\sum x)$
 - A is the allocation percentage

- Y is the amount left over after base allocation
- X is either the letter of intent from County or actual dispersal by County for first and second allocation respectively

The percentage is applied to the intent amount or actual amount giving the amount owed each district. He said that in addition to direct allocations, the Legislature provided \$15,000 for insurance to each district in fiscal year 2009; however, \$35,700 is required to cover all insurance costs and the difference was taken out of the original allocation amount.

Mr. Bybee's presentation included a handout illustrating the fiscal year 2009 district allocations. He explained that the percentage of allocation this year was reduced from 56% of the general fund request to 47.6%. This handout is also available in the Legislative Services Office.

Cochairman Roberts commented that it would be helpful to see an additional column on the handout that shows the difference between the letter of intent amount agreed upon by the districts and the actual amount the districts received. **Mr. Bybee** said that he would get the Committee this information.

Representative Chavez asked how long the Commission has been using this formula. **Mr. Bybee** said that the history of applying a percentage has been used for many years. He added that the budget issues this year caused things to change.

Cochairman Stegner asked why Ada County received \$50,000. **Dwight Horsch, Chairman, Idaho Soil Conservation Commission**, explained that the County Commissioners lobbied for the money. He noted that this is an odd occurrence but added the supervisors have done a great job and the commissioners recognized that.

Cochairman Stegner commented that it seems the state should be able to come up with something easier to understand that results in a firmer commitment between the first and second allocation to the Districts. **Mr. Bybee** agreed and added that the statutory base funding amount has not been raised in 20 years. Mr. Bybee said there have been discussions of changing to a progressive or sliding scale.

Cochairman Stegner noted that the current general fund allocation is \$693,900 and asked what that has looked like over the last five years. **Mr. Bybee** said that funding reached a high of \$729,000 in 2001 and has fluctuated since due to budget cuts. **Cochairman Stegner** asked whether funding has been lower than \$693,900. **Mr. Bybee** responded that the amount decreased in 2002 and 2003 and then flattened out at about \$693,000.

Cochairman Stegner asked what type of insurance Mr. Bybee was referencing during his discussion relating to the general fund support for the districts. **Mr. Bybee** explained that the insurance costs are related to risk and liability insurance for individual districts.

Pamm Juker, Chief of Staff, Department of Agriculture, was introduced as the next speaker to describe the relationship between the Idaho State Department of Agriculture and the Soil Conservation Commission. She explained that the Commission is located within the Department of Agriculture and that the Department has provided infrastructure for the Commission, including a wide array of support services. These services have included accounting functions, assistance in preparing and reviewing budgets, budget presentations and reports and providing a full scope of IT services. She also noted that the Deputy Attorney General for the Department has also provided a full scope of legal services for the Commission. **Ms. Juker** stated that it has been difficult to delineate the scope of authority between the Department and the Commission.

Ms. Juker went on to say that due to an impasse that occurred between the Department and the Commission, a Memorandum of Understanding (MOU) was developed as a temporary solution to some of the gray areas. Ms. Juker explained that the intent of the MOU was to allocate the Director's authority and responsibility relating to the Commission, to the Commission. A copy of this MOU is available at the Legislative Services Office.

Ms. Juker said that the Department will continue to provide the office space and infrastructure the Commission needs to operate. The Department will also continue to provide human resource services such as the publication and processing of hiring documents. The Department will also continue to process payment of bills for the Commission and supply any reports necessary. **Ms. Juker** said that fiscal decisions requiring detailed advice will be directed to the Division of Financial Management. She noted that the Department has learned that the Attorney General's Office will be reassigning another Deputy Attorney General to the Soil Conservation Commission.

Representative Chavez asked whether the Department of Agriculture performs audits for the Commission and for the Districts and if not, who fills that role and who disperses that information. **Ms. Juker** deferred to the Department's Fiscal Officer, **Kelly Nielsen**. **Mr. Nielsen** said that the districts are audited individually and those audits are published. He said the Department of Agriculture provides financial information but not audit functions for the districts. **Representative Chavez** asked where the districts' audit information is held and whether the Commission is audited. **Mr. Nielsen** stated that the Commission is considered part of the Department of Agriculture and is included in the statewide audit that is performed by the state auditors on a three-year rotation. He said that the districts are each required to receive an independent audit and copies of district audits are available to anyone who requests them. **Representative Chavez** asked when the statewide audit would be available for observation. **Mr. Nielsen** said that the preliminary audit report was completed in May and the final report should be available this fall.

Cochairman Stegner asked if the requirement that districts have an independent audit is in statute. **Mr. Nielsen** replied yes. **Cochairman Stegner** commented that the financial obligation for the districts to have audits and the fact that the Commission is not statutorily required to oversee those audit functions could be one point of controversy

within the state. In his opinion, this policy should be better defined in statute. The districts are created in statute and the members are elected by people in the districts. He noted that the elected district members are required to provide for an audit, but there is no additional oversight by the state of that financial requirement. He suggested that the Committee concentrate on this area as it moves forward.

Senator Kelly asked whether the services provided by the Department of Agriculture to the Commission are also provided to the districts by either the Department or the Commission. **Ms. Juker** said that the Department provides support services to the Soil Conservation Commission and staff, but beyond that the Commission prescribes the relationship between it and the districts.

Ms. Juker concluded that it is the current Director of the Department of Agriculture's perspective that the Department and Soil Conservation Commission have a cooperative and fruitful working relationship. She emphasized that the current Director has the utmost respect and appreciation for the Commission and the work it does but the delineation of statutory responsibility is unclear and the authority to manage the Commission's activities is vague. **Ms. Juker** said that it is their recommendation that the Director of the Department of Agriculture's statutory authority be formally removed and delegated to the Soil Conservation Commission.

Cochairman Stegner asked whether the Department has any involvement in the creation of the Commission's budget. **Ms. Juker** said the budget is presented by the Administrator of the Soil Conservation Commission. She noted that the Department does have a hand in the creation of the budget because it handles some of the accounting functions for the Commission. The Department helps provide information needed to present the budget and helps with the budget presentation. The Department includes the Soil Conservation Commission in the budget preparation process before it is presented to JFAC. **Ms. Juker** noted that the Director has input in the Commission's presentation prior to the JFAC presentation. **Cochairman Stegner** asked whether the Director of the Department has veto authority or any responsibility for modifying the budget or direct oversight authority to change the Commission's budget. **Mr. Nielsen** explained that the Commission creates its own budget and the Department of Agriculture enters the data and is present when the Soil Conservation Commission meets with the Department of Financial Management to go over the budget request. He added that the Department of Agriculture and the Soil Conservation Commission are identified as "Agency 210" for appropriation purposes so if there is any change in the general funds, it affects both groups. He explained "Agency 210" means that the Department's and Commission's budgets are created and presented individually but are combined into one agency in the Legislative Budget Book. He further explained that the Board of Veterinary Medicine, the Sheep Commission and the Aquaculture Commission also have budgeting responsibilities that are presented within the Department's budget. **Cochairman Stegner** commented that there is a host of other commissions generally housed within the Department of Self-Governing Agencies that are entirely independent of the Department of Agriculture. **Mr. Nielsen** said that was correct.

Senator Kelly asked if the recommendation is that the Soil Conservation Commission be treated more like other commissions that are independent from the Department of Agriculture. **Ms. Juker** responded yes. **Senator Kelly** asked whether this recommendation had the endorsement of the Governor. **Bonnie Butler** from the **Governor's Office** said to her knowledge, the Director has not discussed this proposal with the Governor.

Cochairman Roberts commented that the changes made by the Attorney General's Office had only been made recently. He asked whether the Director was still comfortable furnishing other services mentioned in the MOU. **Ms. Juker** said yes, the Department is happy to provide those services, but management and decision-making would be reserved for the Commission.

Cochairman Roberts asked how the Department of Agriculture deals with other commissions that are combined with the Department's budget. **Ms. Juker** explained that the Board of Veterinary Medicine only has one or two employees. The Department of Agriculture provides that Board with services similar to those provided to the Soil Conservation Commission. The Sheep Commission is also similar but the Department does not provide any IT support because that Commission is not located in the same building.

Angela Kaufmann, Deputy Attorney General for the Department of Agriculture, stated the Board of Veterinary Medicine and the Sheep Commission do not get legal support from the Department of Agriculture's Deputy Attorney General. It is her understanding that under the new arrangement, the Soil Conservation Commission will be able to contact **Clive Strong** in the Attorney General's Office for advice. **Mr. Strong** will either answer or refer the question to someone else.

Cochairman Stegner said that, gauging from the language in the MOU, he is assuming that it is being viewed as a temporary measure, filling the gaps until the Committee researches the issues. **Ms. Juker** agreed and added that, knowing the Committee was being formed, the Department did not want to lock into an agreement for any length of time, but rather rely on the Committee's expertise to come up with solutions.

In response to a question from **Senator Heinrich** regarding individual district use of the Attorney General's office for legal services, **Ms. Kaufmann** said there has been a small amount of use, typically funneled through the Commission's Administrator. These services have mostly been for personnel-related or contractual issues, not ongoing legal services. It is her understanding that the districts would also use **Mr. Strong** under the new arrangement.

Kent Foster, Idaho Association of Soil Conservation Districts, commented that, twelve years ago, the Soil Conservation Commission was housed within the Department of Lands. The legislation that moved the Commission to the Department of Agriculture also gave the Director of the Department of Agriculture the authority to appoint the Administrator of the Soil Conservation Commission. There was language in the

proposed legislation that both the districts and the Commission successfully fought to have taken out. However, the Director's appointment authority was left in the legislation that passed.

The next speaker was **Dwight Horsch**. He began by thanking the Committee for reviewing the statutes and noted that it will be very helpful to clarify who has what authority. He explained that the mission of the Soil Conservation Commission is to provide leadership and assistance for natural resource conservation programs in coordination with other local, state and federal agencies. The Commission also provides support to all 51 conservation districts. Through these local districts, technical assistance, financial incentive programs and educational programs are provided to private landowners and land users. He then went on to describe the Commission's values.

Mr. Horsch stated that accountability has always been a high priority for the Commission. He said that he is not sure why the Commission established the requirement that each district provide a monthly report. These requirements were implemented before his time. It is the opinion of the Commission that it is its responsibility to get the money that is appropriated by the Legislature out to the districts and to require a monthly report showing what the districts do with that money. He added that the Commission has an Attorney General opinion to back up the Commission's requirement for monthly reports. He said that these reports are helpful because the Commission gets requests throughout the year from different entities inquiring where the money is going.

Representative Chavez asked what the Soil Conservation Commission does with the information that comes from districts and what the reports are used for. **Mr. Horsch** said that when the information is requested by the Governor, Legislature, the Legislative Services Office or any other entity, the accumulated facts and figures are readily available. He also noted that requests for this information do not happen just once a year; rather, throughout the year. **Representative Chavez** asked what kind of information can be generated from the monthly reports, what can be learned from that information and how that information is distributed. **Mr. Horsch** said the information is broken down to show what went to capital, computers, insurance, vehicles, personnel, land owners, conservation, plant and trees, saving streambeds, acres of soil saved and so on.

Representative Chavez commented that the information is not distributed unless there is a call for it and asked whether each of the 51 districts know what is happening around the state. **Mr. Horsch** stated that this information is also used to compile an annual report that is distributed to each of the 51 districts.

Mr. Horsch continued with his PowerPoint presentation, explaining the Soil Conservation Commission's responsibilities to local conservation districts. **Mr. Horsch's** complete PowerPoint presentation is available in the Legislative Services Office.

Mr. Horsch commented that although he thinks rulemaking will slow the Commission's loan process down, it is probably time for that to happen. He also said that he thinks

some of these programs, such as TMDLs and Carbon Sequestration, belong in other agencies. **Cochairman Stegner** agreed that Carbon Sequestration and TMDLs belongs elsewhere; possibly Water Resources or DEQ. **Tony Bennett, Technical Operations Manager, Soil Conservation Commission**, explained that TMDLs were brought about by litigation and Senate Bill 1284 in 1995. He said that from an agricultural standpoint, there are agriculture requirements in those TMDLs. As part of that process the Commission took a proactive measure to deal with the TMDL issue at local levels. Implementation plans were required and they worked with individual land owners in the districts to implement those plans.

Mr. Bennett went on to discuss carbon sequestration. He said this program was also a result of legislation that put the Soil Conservation Commission in the lead role to evaluate from an agricultural and forestry standpoint in terms of potential markets, revenue streams and relationships that could be used to address the issues. He stated that the Commission is required to put together a report. That report is available on their website. The Commission looked at potential practices that farmers would use, as well as pilot projects and trading potential. He said they are currently at a standstill waiting for national legislation.

Mr. Horsch noted that the RCRDP and CREP programs were areas where two loan officers who were convicted of wrongdoing. These employees were caught as a result of the Commission's own protocols. In one case, the program had just gone through a state audit and had passed. Since then, the Commission added more safety and security measures to protect itself and its clients. **Cochairman Roberts** asked if the state audit that didn't catch the error was performed by the legislative audit services. **Mr. Horsch** responded yes. In response to a question from **Senator Kelly**, **Mr. Horsch** said it was the Commission's loan officer who falsified the loan to himself. He added that this had nothing to do with districts.

Representative Bolz asked whether the Legislative Services Office Audit Department still does the audit for Soil Conservation Commission. **Sara Schmidt, Administrator, Soil Conservation Commission**, said the Commission just received an audit from the Legislative Services Office for fiscal years 2006 through 2008. **Representative Bolz** asked if the Legislative Services Office is continuing to do the audit. **Ms. Schmidt** said that she has not been apprised of any forthcoming changes to this process.

Senator Brackett asked whether the monthly reports from districts are required by statute, rule or the Commission's practice. **Carol Youtz, Soil Conservation Commission**, responded that she was relatively new to her position and was told by her predecessor the monthly reports are required in the event other agencies asked for numbers. These reports are also used to compile the Commission's annual report. Many of the districts use QuickBooks and that allows her to get the reports herself. Other districts send data electronically and she uses excel spreadsheets to compile the reports. **Morgan Evans, Soil Conservation Commission**, commented that the monthly reports have been used for the last eight years to answer questions from the Legislature, government agencies and from individuals. The information is kept confidential except

for the information that is necessary to show where the money is being spent. He noted that their loan program has helped numerous individuals. He emphasized that the Commission is a non-regulatory agency, meaning the Commission does not regulate people. **Senator Brackett** requested additional information regarding the background of the monthly reports. **Mr. Horsch** said he would get this information for the Committee. He expects that the monthly report requirement came about through an agreement between the districts, the Commission and the Association, noting that the Commission has not done a lot without the districts' approval.

Senator Brackett commented that, in his opinion, the reason the TMDLs and Carbon Sequestration programs are the responsibility of the Soil Conservation Commission is because it is a non-regulatory agency.

Steve Miller, President, Association of Soil Conservation Districts, was the next speaker. His complete PowerPoint presentation is available in the Legislative Services Office. He said that the Association's expectations for this Committee process are that there will be a positive outcome for all parties, that it will strengthen the conservation partnership and coordinate Idaho's natural resource conservation.

Mr. Miller then gave a brief history of the conservation partnership. He explained that the Association has six divisions with a director elected by each division. These comprise the Board of Directors for the Association, which represents the 51 soil conservation districts. There are five to seven locally elected supervisors in each district and 283 locally elected supervisors statewide. He introduced **Kent Foster** as the Executive Director of the Association.

Mr. Miller then described the responsibilities of the conservation partners. Federal agencies provide technical assistance and financial assistance, state agencies provide statutory authority and assistance and districts provide local leadership, non-regulatory incentive based conservation. He then discussed the statutory empowerment, the support and capacity building responsibility and the capabilities of the conservation districts.

Mr. Miller went on to discuss issues of concern, including the structure of the Commission. He distributed a handout describing the structure of soil conservation commissions in other states. This handout is available in the Legislative Services Office. He noted that states with a successful Commission-district relationship have all gone through reorganization and legislative rebalancing of the relationship. He added that it is important to more clearly define the proper relationship between the Soil Conservation Commission and the districts.

Mr. Miller made several recommendations to the Committee. In terms of the selection process for soil conservation commissioners, he suggested that each Association division elect one representative and the Governor select one representative at large. He explained that allowing the divisions to elect representatives provides accountability to supervisors, increases confidence, encourages ownership of the Commission by the

supervisors and links supervisors to the state. He also suggested eliminating political affiliation requirements.

Senator Kelly asked at what level the election would be held. **Mr. Miller** explained that the election would be within a division and the districts within the division would elect a representative. **Senator Kelly** requested a map of the districts and divisions throughout Idaho. **Mr. Miller** said he would get a map of the districts for the Committee.

Cochairman Stegner explained that there are 44 counties in the state and the 51 districts are predominantly set by county boundaries.

Representative Boyle asked how the supervisors are currently elected. **Mr. Miller** replied that districts have special elections.

Mr. Miller also recommended that the name of the Soil Conservation Commission be changed in order to avoid confusion. He presented several name suggestions, including Office of Natural Resource Conservation, Department of Natural Resources and Office of Idaho Natural Resources. He also recommended that the Commission's state organization location be changed. He said that the Department of Agriculture is a fee-based regulatory agency, whereas the Commission and districts are locally led and non-regulatory in nature. He suggested that the Commission function is a better fit within the Natural Resources group and pointed out that other commissions are located in the Department of Self-Governing Agencies.

Mr. Miller then moved on to discuss the budget process for the Association. In May there is a public budget hearing that the Association attends. The Commissioners vote on a budget. He said that at some point between the vote and the Commission's presentation to the Legislature, the budget can change without notice or the ability to participate. He explained that the base allocation to the districts is set by statute at \$5,000 and the distribution of the 2:1 match allocation is based on district revenue from the city and county. He suggested that both need to be adjusted and that the districts and the Commission need to work together to set allocations. He also noted that the smaller districts are impacted by the mechanism of allocation and pointed out that there is a significant disparity between the large and small districts.

Mr. Miller then discussed accountability, stating that the supervisors understand the importance of accountability. He suggested developing a reporting system from the districts to the Commission to be used by the state. **Representative Chavez** asked if the reporting system would include more than checkbook-type information, but also an indication about what is actually happening on the ground with the implementation of projects. **Mr. Miller** said yes, financial accounting is important but it is also important to record accomplishments in resource conservation. He added that a better job needs to be done with the overall reporting for the benefit of the state. In that regard, reports need to reflect not only finances, but conservation accomplishments as well.

Lastly, **Mr. Miller** recommended that districts be granted taxing authority. He noted that, nationwide, about one-third of the states grant taxing authority in some capacity. In

the state of Washington, one-third of the districts have taxing authority and in the state of Wyoming, about one-quarter of the districts have taxing authority. **Senator Heinrich** asked if taxing authority would replace the general fund allocation from the state. **Mr. Miller** said no, this would be an alternative method of local funding and added that districts would not survive without state funding.

Cochairman Stegner commented that he would like to further explore the relationship between the Association, the districts and the Commission, as well as the financial arrangements between the Association and the Commission. He said that the Association is referred to in statute but was not created by the Legislature. He also pointed out that divisions are an invention of the Association, they are not in code. This raises questions about the financial conditions and arrangements between the Association and the Commission as public money is filtered through the Association. He said the Committee needs to determine that what is being done has statutory authority and that these relationships are sanctioned by the Legislature. He noted that there is a difference between associations and commissions, the two have distinct purposes. Associations are permitted to engage in lobbying efforts while commissions are not. At a future meeting, **Senator Stegner** would like the Association's relationship with the Commission and the districts to be clarified.

Cochairman Stegner added that the rulemaking process is important because it protects and involves the public. The Legislature reviews all of the rules to ensure agencies are operating as intended by the Legislature. He thinks this Committee will lean toward rulemaking as an important option for these issues.

Steve Becker, Nez Perce Soil and Water Conservation District (NPSWCD) and **Cody Anderson, Latah Soil and Water Conservation District (LSWCD)**, were introduced to discuss background and current issues in their Districts. Their complete PowerPoint presentation is available in the Legislative Services Office.

Mr. Becker explained that the NPSWCD has a publicly elected board consisting of seven people. Since 1941, the NPSWCD has fulfilled its charge as the primary entity to provide assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of the District's natural resources. He noted that at times it has been tough to balance resource needs with resource shortages, but that the District survives. He said that over 55 people have donated time to serve as board members and promote a grass roots local government approach to solving natural resource issues. The NPSWCD operates on an annual budget of approximately \$600,000 and provides projects in the areas of agriculture, forestry, fisheries, wetland mitigation and development, transportation and youth outreach and water quality.

Mr. Anderson explained that the LSWCD Board is made up of seven elected members and has a **District Manager, Ken Stinson**. The LSWCD currently employs five staff members who serve as conservation planners, field technicians, computer specialists and outreach coordinators. Active programs within the LSWCD include agriculture, forestry, fisheries, Palouse Prairie restoration, youth outreach and water quality. The District

currently operates on a \$900,000 budget. Over the past several years, the annual budget has been between \$800,000 and \$1 million, funded through state and federal grants and contracts. The District is presently managing in excess of 20 state and federal grants and over the past ten years has managed over 70 grants and contracts in excess of \$6.5 million.

Mr. Becker commented that the Districts are developing a detailed handout highlighting issues and suggestions to strengthen Idaho's conservation districts and non-regulatory conservation programs throughout Idaho. He noted that their presentation will highlight several critical topics that capture their concerns over the past several years. It is their belief that Idaho's 51 conservation districts should continue to be the lead entities for the planning and implementation of non-regulatory conservation practices throughout the state. He said that, on behalf of fellow supervisors, they would encourage the Legislature to not only maintain the statutory language emphasizing non-regulatory, incentive-based programs, but strengthen language to clearly highlight the local leadership role of conservation districts throughout Idaho.

Mr. Becker said that since the Commission is required to provide service and assistance to the districts, it seems appropriate that Commission members be held accountable to the districts. He suggested a revised process for nominating Commission members in order to accomplish this. He and **Mr. Anderson** proposed increasing the Commission to seven members in order to better represent the various issues throughout the state. Each division would supply the Governor with two names. If the names are unacceptable, the division would supply two more names until suitable candidates are chosen. The Governor would appoint the seventh member at large. In addition, they recommend reducing the term of office for members from five to three years.

Mr. Becker said that confusion may exist regarding the influence of a regulatory agency over a non-regulatory agency with respect to budgeting, program and staff guidance. He stated that Latah and Nez Perce supervisors are publicly elected officials who stand for election by the constituents in the same manner as county commissioners and state legislators. It is their opinion that a non-regulatory state agency should not be authorized to remove elected officials. He said that as elected officials, they are subject to recall elections and formal actions by the Office of Attorney General. They suggest that this authority be removed from statute and replaced with language that references appropriate Idaho Code provisions relating to recall elections and criminal prosecution similar to other elected officials.

Mr. Anderson went on to highlight high priority issues. The first issue focuses on the Commission's past actions in withholding legislative funds from districts. He noted that the Commission withheld funding from the Latah District this past year. He referenced a letter dated July 7, 2008, from the Commission Chairman informing the LSWCD as follows: "Exclusion of the Latah SWCD from the FY09 allocation process for base and match funds appropriated by the Legislature." The NPSWCD received a similar letter. In addition to the July 7 letter, the Commission also attempted to terminate two of Latah's water quality contracts that were in good standing. **Mr. Anderson** said that the

Commission also threatened to cancel a division-wide animal feeding operation contract that was also in good standing if the administrative responsibilities for this contract were not reassigned from the District. The Commission reversed its decision after a meeting in September 2008, which was attended by eight legislators and 20 publically elected officials representing all five districts within division II.

Mr. Anderson said that the Commission's actions against Latah were based on the fact that the Commission was requesting a "complete electronic QuickBooks data file on a monthly basis." He said that as with most public agencies, the raw financial data file contains private and sensitive information that is normally not disclosed without a clear requirement to do so. In the July 7, 2008 letter, the Commission argued that "the information contained in the requested complete electronic QuickBooks data file is needed to implement the Commission's statutory responsibilities and mandates." On July 22, 2008, the LSWCD requested detailed information clarifying 16 issues associated with the July 7 letter. On August 7, 2008, the Commission responded. In its response to 13 of the 16 requests for information, the Commission stated "there are no documents responsive to this request". Six months later, in December 2008, following discussions with legislators, LSWCD and NPSWCD received their fiscal year 2009 funds.

Mr. Anderson said that since that time, the Commission has continued to develop policies that threaten to withhold or forfeit funds from districts if they do not comply with Commission policies. He asked if it is the desire of the Legislature to grant authority to the Commission to withhold legislatively appropriated funds from district officials.

Mr. Anderson continued, saying that given the fact the Commission has undertaken efforts to remove publically elected officials and has withheld funds from the Latah and Nez Perce SWCDs, they request that the Committee review the Commission's requirement to formally adopt applicable rules, policies and procedures and guidelines necessary to implement their explicit statutory duties. Many recent policies have not been developed through a formal process, such as a Commission meeting, and some are developed at the sole discretion of the Chairman. He added that the Commission has also adopted numerous policies with limited public review and that districts are not always notified of these changes. **Mr. Anderson** said that they would like to see the Commission's rulemaking requirements and policy development procedures come under formal public scrutiny in order to assure the Commission has appropriate authority to make these policies and to ensure that those affected are given an adequate opportunity to review them in draft form.

Mr. Anderson said that another critical issue for all 51 districts is the budgeting process between individual districts and the Legislature. At each annual public hearing, the final decision is to request 2:1 matching funds from the Legislature on behalf of all 51 districts. This level of funding was not formally submitted by the Commission to the Legislature for full consideration. He said that through a review of recent Commission minutes, it appears the Commission considers decisions made at the annual formal public hearing as advisory to the Commission as it develops its annual budget request to the Legislature. **Mr. Anderson** has been told that the reason matching funds are not

requested is due to a lack of support for districts by the Governor and the Legislature. He recommended an alternative approach for reviewing district budget requests. He suggested that the budget requests be presented to the Legislature directly from the districts and that this budget request appear as a separate entity within the Legislative Budget Book. This would allow the Governor and Legislature to review district matching funds requests and would allow districts to present specific project proposals directly. Also, JFAC would be able to ask questions directly to the elected district officials as opposed to agency staff. **Mr. Anderson** concluded that with an independent budget development and presentation process, funding appropriated by the Legislature on behalf of conservation districts may be more directly appropriated to conservation districts as opposed to the current system where legislative funding is appropriated to the Commission on behalf of conservation districts.

Mr. Anderson stated that another critical issue is the need to clear the public record. He noted that over the past several years, the Commission has made numerous public allegations against elected officials and staff. According to **Mr. Anderson**, these allegations are made through memos, emails and letters distributed to clients, legislators and state and federal agency heads. While the Commission has changed course frequently regarding the allegations, few attempts have been made to publically correct the record in a way that affected parties feel their professional and personal reputations have been restored.

Mr. Anderson reiterated that he and **Mr. Becker** seek to work for conservation districts to put conservation on the ground in a way that works for their clients and to build a stronger independent conservation district delivery system throughout Idaho.

With regard to an earlier question from **Senator Kelly** relating to the use of legal counsel by the districts, **Mr. Anderson** commented that during this process, LSWCD needed assistance. He contacted Deputy Attorney General **Steven Strack**. He was told by **Mr. Strack** that they could not give the district legal advice because they were already representing the commission and to do otherwise would be a conflict of interest. **Mr. Anderson** said he would like clarification as to whether the districts have access to the Attorney General's Office.

Representative Chavez asked if all projects are generated in districts or if the Commission has projects of its own that use resources that could be going to the districts. **Mr. Becker** said that they do compete with the Commission for funds for certain projects. In his opinion, it would be better if the money was funneled through the districts.

Senator Kelly noted that the general fund allocation in 2009 for NPSWCD was \$24,000 but their budget is close to \$1 million. She asked where the difference is coming from and why the general fund money is so important. **Mr. Becker** explained that the budget is higher because they have active staff who pursue outside funding sources. **Mr. Anderson** added that the general fund money is important to the smaller districts. **Senator Kelly** asked if the portion of money the Latah and Nez Perce Districts have is

larger than other districts. **Mr. Anderson** replied yes and added that is the reason they would like the Committee to address the \$5,000 base funding amount. **Kyle Hawley, Association of Soil Conservation Districts**, said that the management situation from the districts across the state is that they need a certain amount to begin with in order to gain the expertise necessary to move forward. He added that there is potential for multiplying funds received from the state and that LSWCD and NPSWCD are good examples of the investment value.

Representative Boyle asked for an example of a project in which the Commission was competing against the Districts for funds. **Mr. Stinson** explained that when the budget is carried by the Commission, it determines the priority of the projects before presenting them to the Legislature. This puts the districts in competition with the Commission.

Cochairman Stegner thanked the District Chairmen for sharing these frustrations with the Committee. He added that the Commission has gone through some changes since many of these issues began last summer. He asked for a characterization of the current relationship with the Commission. Both **Mr. Becker** and **Mr. Anderson** agreed that there have been positive changes among both groups since last fall. **Mr. Anderson** added that they were not sure whether the changes in the Commission's attitude were due to legislative interference or whether the changes were a result of the Commission's desire to move toward assisting the districts. He requested that the Committee strive to more clearly define responsibilities and authority in statute to avoid ending up in the same position in the future.

Senator Kelly asked if district supervisors are paid for their services. **Mr. Becker** replied no. **Mr. Anderson** added that there are 283 supervisors throughout the state who are all volunteers but are reimbursed for legitimate business expenses.

Cochairman Stegner requested a point by point summation of all recommendations made for the next meeting.

Cochairman Roberts suggested that, for future Committee discussions, issues be broken down into a list. He listed the following items as issues that may warrant further discussion:

1. District allocations and how the \$5,000 base funding is distributed;
2. Audits both at the district and Commission level, as well as tracking the performance of projects on the ground;
3. Clarify the budget process;
4. Director of the Department of Agriculture's recommendation that appointment authority be delegated to the Commission;
5. Commission structure – how members are elected and the term of office;
6. Clarify the relationship between the Commission and the Association;
7. Use of public money to fund the Association's operations; and
8. District access to the Attorney General's Office for legal services.

In response to a question regarding FTEs, **Ms. Schmidt** said it was her understanding that nine of the 24 FTEs are funded by the Association.

Representative Bolz suggested that the Committee invite a representative from the Natural Resources Conservation Service (NRCS) to speak at the next meeting. He said that the NRCS is tied very closely to the Commission and to the districts.

Representative Chavez commented that the statutes are very cumbersome and contain a lot of antiquated language. She added that it is very difficult to find who is responsible for what. **Senator Kelly** agreed that the statute needs to be adjusted. She emphasized the Commission's clear rulemaking authority in several sections of the chapter. She added that in some instances, there is mandatory language requiring that the Commission adopt rules. She suggested that the Committee clearly define what the expectation is from a guidelines and rules standpoint. **Cochairman Roberts** requested that, at the next meeting, the Commission bring copies of its current administrative rules, as well as any proposed or temporary rules it is considering.

Senator Kelly commented that she would like clarification about the accounting mechanisms that are in place in order to better understand who is accountable to who and to what degree from a financial standpoint. **Cochairman Roberts** agreed and said that this is one of the main reasons for the formation of the Committee. He noted that it is important to balance financial accountability of the districts with the freedom of the districts to plan and perform conservation programs. He added that many of these programs would not exist if not for the volunteer participants.

Cochairman Stegner identified four categories of issues to be addressed by the Committee:

1. Budget Issues:

- Review and modify the budget formula;
- Investigate the possibility of districts presenting budget requests directly to the Legislature; and
- Pursue the Association's request that districts be given taxing authority

2. Commission Structure:

- Commission membership;
- Commission location; and
- Legal representation

3. Commission Oversight:

- Commission's oversight over districts;
- Commission's function and authority and whether it is acting within its statutory authority; and
- Commission's rulemaking authority and responsibility.

4. Association Issues:

- Learn more about the Association, its legal standing and its participation in expending public money.

Cochairman Stegner suggested that the next meeting begin with a comparison of other states' statutes, including their statutory oversight provisions. He added that the purpose of the next meeting would be to gather more information in greater detail.

Representative Boyle commented that given that there has been very little rulemaking, the Commission may have relied on policy more than anything else.

Leon Slichter, Soil Conservation Commission, emphasized that money for conservation projects coming from outside of the state are cost share projects. Participants on the ground contribute their own money to these projects.

Charlene Wimpy, Payette SWCD, commented that district employees are not all full-time. Most are part-time, working anywhere from one day a week or month to 24 hours a week.

Representative Stevenson said that the overall picture of the problem is probably not as bad as it seems, but solving these issues now could prevent problems in the future.

Claude Bruce, Payette SWCD, commented that his greatest concern is that the districts are penalized for working. His district would like to see pass through money, such as 319 funding, be separated so that it does not show as part of their total budget. In the current system, that money causes the Payette SWCD to pay for a full annual audit instead of just a financial review.

The next meeting was scheduled for Wednesday, September 23, 2009 at 10:00 a.m. in Jerome, Idaho. **Senator Brackett** announced that **Terry Halbert, District Manager, North Side Soil & Water Conservation District**, is willing to host the next meeting at the Community Room in Jerome. **Mr. Halbert** said that lunch will be provided for all in attendance.

The meeting was adjourned at 3:10 p.m.